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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 **Scott Johnson,**

18 Plaintiff,

19 v.

20 **Sam A. Nawar**, in individual and
21 representative capacity as trustee of
22 the Nawar Trust;
23 **New Pho Saigon Corporation**; a
24 California Corporation; and Does 1-
25 10,

26 Defendants.

27 **Case No.**

28 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

29 Plaintiff Scott Johnson complains of Sam A. Nawar, in individual and
30 representative capacity as trustee of the Nawar Trust; New Pho Saigon
31 Corporation; a California Corporation; and Does 1-10 ("Defendants"), and
32 alleges as follows:

33
34 **PARTIES:**

35 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
36 level C-5 quadriplegic. He cannot walk and also has significant manual
37 dexterity impairments. He uses a wheelchair for mobility and has a specially
38 equipped van.

1 2. Defendant Sam A. Nawar, in individual and representative capacity as
2 trustee of the Nawar Trust, owned the real property located at or about 1770
3 Clear Lake Avenue, Milpitas, California, in May 2019 and June 2019.

4 3. Defendant Sam A. Nawar, in individual and representative capacity as
5 trustee of the Nawar Trust, owns the real property located at or about 1770
6 Clear Lake Avenue, Milpitas, California, currently.

7 4. Defendant New Pho Saigon Corporation owned New Pho Saigon
8 located at or about 1770 Clear Lake Avenue, Milpitas, California, in May
9 2019 and June 2019.

10 5. Defendant New Pho Saigon Corporation owns New Pho Saigon
11 (“Restaurant”) located at or about 1770 Clear Lake Avenue, Milpitas,
12 California, currently.

13 6. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of,
16 and alleges a joint venture and common enterprise by all such Defendants.
17 Plaintiff is informed and believes that each of the Defendants herein,
18 including Does 1 through 10, inclusive, is responsible in some capacity for the
19 events herein alleged, or is a necessary party for obtaining appropriate relief.
20 Plaintiff will seek leave to amend when the true names, capacities,
21 connections, and responsibilities of the Defendants and Does 1 through 10,
22 inclusive, are ascertained.

23

24 **JURISDICTION & VENUE:**

25 7. The Court has subject matter jurisdiction over the action pursuant to 28
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28 8. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of
2 the same transactions, is also brought under California's Unruh Civil Rights
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
5 founded on the fact that the real property which is the subject of this action is
6 located in this district and that Plaintiff's cause of action arose in this district.
7

8 **FACTUAL ALLEGATIONS:**

9 10. Plaintiff went to the Restaurant in May 2019 and June 2019 (twice) with
10 the intention to avail himself of its goods, motivated in part to determine if the
11 defendants comply with the disability access laws.

12 11. The Restaurant is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
15 to provide wheelchair accessible parking in conformance with the ADA
16 Standards as it relates to wheelchair users like the plaintiff.

17 13. On information and belief the defendants currently fail to provide
18 wheelchair accessible parking.

19 14. Additionally, on the dates of the plaintiff's visits, the defendants failed
20 to provide wheelchair accessible paths of travel to the Restaurant restroom in
21 conformance with the ADA Standards as it relates to wheelchair users like the
22 plaintiff.

23 15. On information and belief the defendants currently fail to provide
24 wheelchair accessible paths of travel to the restroom.

25 16. Additionally, on the dates of the plaintiff's visits, the defendants failed
26 to provide wheelchair accessible sales counters in conformance with the ADA
27 Standards as it relates to wheelchair users like the plaintiff.

28 17. On information and belief the defendants currently fail to provide

1 wheelchair accessible sales counters.

2 18. These barriers relate to and impact the plaintiff's disability. Plaintiff
3 personally encountered these barriers.

4 19. As a wheelchair user, the plaintiff benefits from and is entitled to use
5 wheelchair accessible parking, paths of travel to the restroom, and sales
6 counters. By failing to provide accessible facilities, the defendants denied the
7 plaintiff full and equal access.

8 20. The failure to provide accessible facilities created difficulty and
9 discomfort for the Plaintiff.

10 21. Even though the plaintiff did not confront the barriers, on information
11 and belief the defendants currently fail to provide wheelchair accessible
12 restrooms.

13 22. Plaintiff seeks to have these barriers removed as they relate to and
14 impact his disability.

15 23. The defendants have failed to maintain in working and useable
16 conditions those features required to provide ready access to persons with
17 disabilities.

18 24. The barriers identified above are easily removed without much
19 difficulty or expense. They are the types of barriers identified by the
20 Department of Justice as presumably readily achievable to remove and, in fact,
21 these barriers are readily achievable to remove. Moreover, there are numerous
22 alternative accommodations that could be made to provide a greater level of
23 access if complete removal were not achievable.

24 25. Plaintiff will return to the Restaurant to avail himself of its goods and to
25 determine compliance with the disability access laws once it is represented to
26 him that the Restaurant and its facilities are accessible. Plaintiff is currently
27 deterred from doing so because of his knowledge of the existing barriers and
28 his uncertainty about the existence of yet other barriers on the site. If the

1 barriers are not removed, the plaintiff will face unlawful and discriminatory
2 barriers again.

3 26. Given the obvious and blatant nature of the barriers and violations
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to his disability. Plaintiff will
6 amend the complaint, to provide proper notice regarding the scope of this
7 lawsuit, once he conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to his disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, he can sue to have all barriers that relate to his
11 disability removed regardless of whether he personally encountered them).

12

13 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
14 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
15 Defendants.) (42 U.S.C. section 12101, et seq.)

16 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 28. Under the ADA, it is an act of discrimination to fail to ensure that the
20 privileges, advantages, accommodations, facilities, goods and services of any
21 place of public accommodation is offered on a full and equal basis by anyone
22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
23 § 12182(a). Discrimination is defined, *inter alia*, as follows:

24 a. A failure to make reasonable modifications in policies, practices,
25 or procedures, when such modifications are necessary to afford
26 goods, services, facilities, privileges, advantages, or
27 accommodations to individuals with disabilities, unless the
28 accommodation would work a fundamental alteration of those

- 1 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 2 b. A failure to remove architectural barriers where such removal is
3 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
4 defined by reference to the ADA Standards.
- 5 c. A failure to make alterations in such a manner that, to the
6 maximum extent feasible, the altered portions of the facility are
7 readily accessible to and usable by individuals with disabilities,
8 including individuals who use wheelchairs or to ensure that, to the
9 maximum extent feasible, the path of travel to the altered area and
10 the bathrooms, telephones, and drinking fountains serving the
11 altered area, are readily accessible to and usable by individuals
12 with disabilities. 42 U.S.C. § 12183(a)(2).
- 13 29. When a business provides parking for its customers, it must provide
14 accessible parking.
- 15 30. Here, accessible parking has not been provided.
- 16 31. When a business provides paths of travel, it must provide accessible
17 paths of travel.
- 18 32. Here, accessible paths of travel have not been provided.
- 19 33. When a business provides facilities such as sales or transaction counters,
20 it must provide accessible sales or transaction counters.
- 21 34. Here, accessible sales counters have not been provided.
- 22 35. When a business provides facilities such as restrooms, it must provide
23 accessible restrooms.
- 24 36. Here, accessible restrooms have not been provided.
- 25 37. The Safe Harbor provisions of the 2010 Standards are not applicable
26 here because the conditions challenged in this lawsuit do not comply with the
27 1991 Standards.
- 28 38. A public accommodation must maintain in operable working condition

1 those features of its facilities and equipment that are required to be readily
2 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

3 39. Here, the failure to ensure that the accessible facilities were available
4 and ready to be used by the plaintiff is a violation of the law.

5

6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
7 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
8 Code § 51-53.)

9 40. Plaintiff repleads and incorporates by reference, as if fully set forth
10 again herein, the allegations contained in all prior paragraphs of this
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
12 that persons with disabilities are entitled to full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishment of
14 every kind whatsoever within the jurisdiction of the State of California. Cal.
15 Civ. Code § 51(b).

16 41. The Unruh Act provides that a violation of the ADA is a violation of the
17 Unruh Act. Cal. Civ. Code, § 51(f).

18 42. Defendants’ acts and omissions, as herein alleged, have violated the
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
20 rights to full and equal use of the accommodations, advantages, facilities,
21 privileges, or services offered.

22 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
23 discomfort or embarrassment for the plaintiff, the defendants are also each
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
25 (c).)

26 44. Although the plaintiff was markedly frustrated by facing discriminatory
27 barriers, even manifesting itself with minor and fleeting physical symptoms,
28 the plaintiff does not value this very modest physical personal injury greater

1 than the amount of the statutory damages.
2

3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual
11 damages and a statutory minimum of \$4,000 for each offense.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
13 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

14
15 Dated: February 5, 2020

CENTER FOR DISABILITY ACCESS

16 By:
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19 _____
20 Amanda Seabock, Esq.
21 Attorney for plaintiff
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